82-1565

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

BACCHUS IMPORTS, LTD., and EAGLE DISTRIBUTORS, INC.,
Appellants,

vs.

GEORGE FREITAS,
Director of Taxation of the State of Hawaii,
Appellee.

On Appeal from the Supreme Court of the State of Hawaii

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Does a state tax of 20% ad valorem on the sale at wholesale of all liquor sold in Hawaii, which singles out (by exemptions for locally produced liquors) imported liquor for discriminatory taxation, constitute a duty or impost on imports prohibited by the Import-Export Clause (U.S. Const., Art. I, § 10, cl 2)?

2. Does such a discriminatory state tax, imposed for the express purpose of fostering and protecting certain local liquor industries, infringe unconstitutionally on the power of Congress under the Commerce Clause (U.S. Const., Art. I, § 8, cl 3)?

3. Does such a discriminatory state tax, by exempting from the tax certain locally made liquors while taxing similar liquors imported into Hawaii by appellant wholesalers, deny to them the equal protection of the laws (U.S. Const., Am. XIV, § 1)?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings in the Hawaii Tax Appeal Court and in the Hawaii Supreme Court were Bacchus Imports, Ltd. (Case No. 1852 in the Tax Appeal Court), Paradise Beverages, Inc. (Case No. 1862), Eagle Distributors, Inc. (Case No. 1866), and Foremost-McKesson, Inc., dba McKesson Wine & Spirits Co. (Case No. 1867), and George Freitas, Director of Taxation of the State of Hawaii (defendant in all cases). In the Hawaii Supreme Court all of these cases were consolidated as No. 7802, October Term 1979.

DESIGNATION OF CORPORATE RELATIONSHIPS

Bacchus Imports, Ltd., and Eagle Distributors, Inc. filing this Jurisdictional Statement jointly as Appellants in this proceeding, state that:

This is their original Designation of Corporate Relationships.

Bacchus Imports, Ltd., at the time of commencement of this action, was an independent Hawaii corporation, and is now a wholly-owned subsidiary of Eagle Distributors, Inc. Eagle Distributors, Inc. is not owned by any parent corporation, and does not have an ownership interest in any subsidiaries which are not wholly owned subsidiaries.

Eagle Distributors, Inc. does not have any affiliates.

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On Appeal from the Supreme Court of the State of Hawaii

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Hawaii Supreme Court (App. A, *infra,* A-1) is reported in 65 Haw. ......, 656 P.2d 724 (1982). The opinion of the Hawaii Tax Appeal Court (App. B, *infra,* A-41) has not been reported.

JURISDICTION

The judgment of the Hawaii Supreme Court (App. C, *infra,* A-56), which sustained the validity of the Hawaii liquor tax (H.R.S. § 244-4, set out at p. 2 *infra*) against

a challenge based on the United States Constitution (Art. I, § 8, cl 3; § 10, cl 2; and Amendment XIV, § 1), was entered on January 5, 1983. The notice of appeal (App. D, *infra*, A-59) was filed with the Hawaii Supreme Court on March 3, 1983. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Section 10, Clause 2 of the United States Constitution provides in part: "No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports . . ."

Section 8, Clause 3 of the same Article provides in part: "The Congress shall have power . . . [t]o regulate Commerce with foreign Nations, and among the several States . . ."

Section 1 of the Fourteenth Amendment provides in part: ". . . No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Section 2 of the Twenty-first Amendment provides: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Section 244-4 of the Hawaii Revised Statutes, as amended to date, provides:

> Every person who sells or uses any liquor not taxable under this chapter in respect of the transaction by which such person or his vendor acquired such liquor, shall pay an excise tax which is hereby imposed, equal

to twenty percent of the wholesale price of the liquor so sold or used; provided, that the tax shall be paid only once upon the same liquor; provided, further, that the tax shall not apply to:

(1) Liquor held for sale by a permittee but not yet sold;

(2) Liquor sold by one permittee to another permittee;

(3) Liquor which is neither delivered in the State nor to be used in the State, or which under the Constitution and laws of the United States cannot be legally subjected to the tax imposed by this chapter so long as and to the extent to which the State is without power to impose the tax;

(4) Liquor sold for sacramental purposes or the use of liquor for sacramental purposes, or any liquor imported pursuant to section 281-33;

(5) Alcohol sold pursuant to section 281-37 to a person holding a purchase permit or prescription therefor, or any sale or use of alcohol, so purchased, for other than beverage purposes;

(6) Okolehao manufactured in the State for the period May 17, 1971 to June 30, 1981;

(7) Any fruit wine manufactured in the State from products grown in the State for the period May 17, 1976 to June 30, 1981; or

(8) Rum manufactured in the State for the period May 17, 1981 to June 30, 1986.

STATEMENT OF THE CASE

The central question presented by this appeal is in one sense as old as the Constitution itself: may a State use its power to tax so as to foster and protect local industries

at the expense of foreign commerce?[1] The material facts are not in dispute.

Appellants Bacchus Imports, Ltd. ("Bacchus") and Eagle Distributors, Inc. ("Eagle") are companies licensed to import[2] liquors into Hawaii and to sell them at wholesale to other licensees. Hawaii imposes a tax on the first sale at wholesale of liquor, at a rate of 20% of the wholesale price (which includes freight charges, customs duties and federal taxes, and the wholesaler's markup). The tax is payable by the wholesaler whether or not it is collected from the purchaser, and is assessed on monthly gross sales reported to the State.

Over the years' Hawaii's legislature has experimented with exemptions from the tax designed to foster various local liquor industries. From 1960 to 1965, when the rate of tax was 16%, okolehao (a brandy distilled from the roots of the ti plant) produced in Hawaii was exempted

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[1]The wrinkle provided in this case comes from the fact that the industry concerned is liquor, with its unique set of precedents under the Twenty-first Amendment, and yet neither the State nor the courts below relied on that Amendment in upholding the tax.

[2]In the context of this case, "import" as a verb is used in its plain sense of "to bring into", without implying a foreign point of origin. Mindful of the distinction created by Woodruff v. Parham (75 U.S. [8 Wall.] 123 [1869]), however, appellants in this brief will use the adjective "imported" to apply only to liquor brought into Hawaii from a foreign country, as distinguished from liquor brought into Hawaii from (or through) one of the other 49 states. Each appellant is licensed to bring, and during the periods of tax protested has brought, imported liquor into Hawaii for sale at wholesale; and since 1979 each appellant has paid under protest its taxes on the sale of such imported liquor (see text at n. 11 *infra*).

from the tax.[3] This exemption expired in 1965, was reenacted in 1971,[4] was extended again in 1976,[5] and expired in 1981. By the same act in 1976, a five-year exemption from the liquor tax was also granted to wine made in Hawaii from fruit grown in the State.[6] This exemption likewise was allowed to lapse in 1981. However, in its 1981 session, while the present cases were pending before the Hawaii Supreme Court, the Legislature enacted and the Governor approved a new exemption for "rum manufactured in the State for the period May 17, 1981 to June 30, 1986."[7]

The legislative history of these exemptions makes their purpose clear: to promote the development and growth of the local liquor industry concerned, and to provide five-year protection blankets during which the local products could compete against imports with the advantage of a lower cost because of the tax exemption. The purpose of the original 1960 exemption for okolehao was stated to be "to encourage and promote the establishment of a new industry."[8] The 1976 exemptions were justified by the Senate Ways and Means Committee as follows:[9]

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[3] 1960 Haw. Sess. Laws, c. 26, § 1.

[4] 1971 Haw. Sess. Laws, c. 62, §1.

[5] 1976 Haw. Sess. Laws, c. 39, § 1 (H.R.S. § 244-4[6]).

[6] 1976 Haw. Sess. Laws, c. 39, §1 (H.R.S. § 244-4[7]).

[7] 1981 Haw. Sess. Laws, c. 182, §1, currently in effect as H.R.S. § 244-4(8). The Hawaii Supreme Court was asked to take judicial notice of this amendment and its legislative history (see n. 10 *infra*) at the oral argument, but in the view it took of the case it did not find it necessary to do so.

[8] 1960 Haw. Sen. Journal, Standing Comm. Rep. No. 87. The bill in its original form exempted the sole manufacturer by name (*ibid.*, and see Standing Comm. Rep. No. 222).

[9] 1976 Haw. Sen. Journal, Standing Comm. Rep. No. 408-76.

The purpose of this bill is to extend the exemption of okolehao manufacture in the State from the liquor tax for an additional five years, to June 30, 1981. It is hoped that this five-year extension will aid the local okolehao industry to get on a firm financial foundation.

Your Committee has amended this bill to provide a similar five-year exemption to the local fruit wine industry. Testimony received indicates that there may be an economic potential to the State in this area which, hopefully, this bill can help stimulate.

The Conference Committee Report on the latest exemption, for Hawaii-made rum, shows that the Legislature continues to hew to its avowed purpose of local protection:[10]

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[10]1981 Haw. Sen. Journal, Conf. Comm. Rep. No. 29. The debate on the Report was as follows:

Senator Abercrombie moved that Conf. Comm. Rep. No. 29 be adopted and H.B. No. 247, S.D. 2, C.D. 1, having been read throughout, pass Final Reading, seconded by Senator Henderson.

Senator Kawasaki rose to speak against the measure as follows:

"Mr. President, generally, I support giving tax exemption to new industries, particularly regarding the manufacture of Hawaiian Liquor, but I have some doubts about an arbitrary five-year exemption that we are providing this particular industry. I'd like to allow them the exemption as long as they need it but a blanket five years without showing cause for it might not be the wisest thing. For that reason, I'd like to vote against this bill."

Senator Henderson remarked: "Mr. President, we have consistently given five-year exemptions, in the initial periods, to these alcohol industries."

Senator Cayetano added his remarks as follows:

"Mr. President, voting with reservations for the bill, my concern is that with respect to new industries, it seems that we

> The purpose of this bill is to exempt rum manufactured in the State from the liquor tax for five years. . . . Your Committee is aware of the consolidated cases in the State Tax Appeal Court, Civil Nos. 1852, 1862, 1866 and 1867, under the name *Bacchus Imports, Ltd., et al. v. Freitas,* currently pending in the State Supreme Court, regarding the validity of certain liquor tax exemptions, and has had extensive discussions with the Attorney General's Office and the State Tax Department regarding the cases. Your Committee also notes that opinions conflict as to whether or not the national tax structure provides an advantage to rum produced in Puerto Rico and therefore makes no findings on that issue. Your Committee does feel, however, that providing a tax incentive in the form of a liquor tax exemption for a period of years is an appropriate method of encouraging the development of a new industry in the State and is therefore in agreement with the intent of the bill.

Appellant Bacchus made its May 1979 payment of liquor tax under protest,[11] and cited as grounds therefor that the Hawaii liquor tax violated the Import-Export and Commerce Clauses of the United States Constitution. In June 1979 it filed suit on the same grounds in the Hawaii Tax Appeal Court, and appellant Eagle followed with its payment under protest in August 1979 and its complaint in September 1979. By subsequent stipulation, there was later added by amendment to each complaint a claim that

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have taken a very selective approach. There's really no rationale for us to give one new industry tax exemption status over another. I suggest that when we come into session next year we consider a more comprehensive approach."

Id., 59th Day, at p. 751.

[11]Payment of Hawaii taxes under protest, and subsequent suit for their refund, is provided for in H.R.S. § 40-35, as amended.

the tax violated the Equal Protection Clauses of both the United States and Hawaii Constitutions.[12] The cases were consolidated and heard on stipulated facts in the Hawaii Tax Appeal Court. The decision of that Court, written by the Hawaii Attorney General's office on the ex parte request of the Tax Appeal Court (see App. B, *infra*, A-41), ruled on plaintiffs' Import-Export Clause and Commerce Clause contentions, holding in favor of the tax, but did not deal with the Equal Protection arguments.

The taxpayers' appeals to the Hawaii Supreme Court were consolidated, and briefed and argued on the facts stipulated in the Tax Appeal Court. Again appellants raised the same constitutional issues argued below. In an opinion which rejected in turn each of appellants' contentions with respect to those issues, the Hawaii Supreme Court ruled that the tax was constitutional:

(i) Despite the plain language of this Court in *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 288 at n. 7 (quoted *infra*, p. 13) (1976), and the holding of this Court in *Department of Revenue v. James Beam Distilling Co.*, 377 U.S. 341 (1964), it held that the tax was in effect "an excise levied on wholesalers" (App. A, *infra*, at A-20), rather than a prohibited duty that singled out imports by place of origin;

(ii) Despite the holding of this Court in *Maryland v. Louisiana*, 451 U.S. 725, 759-760 (1981),[13] it held

[12]Art 1, § 5 of the Hawaii Constitution provides in part: "No person shall be . . . denied the equal protection of the laws . . ."

[13]Maryland v. Louisiana invalidated a "first use" tax on gas because of exemptions from the tax which favored Louisiana residents. The Hawaii tax is no less unconstitutional because of its

that since the tax fell only "on wholesalers of liquor in Hawaii", and applied only to unique local products, it was not an undue burden on interstate or foreign commerce (App A., *infra*, at A-28-30); and

(iii) Despite this Court's twin rulings in *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949) and *Allied Store of Ohio v. Bowers* (1959), the court found again that since "[o]n its face, the Hawaii law applies equally to all wholesalers", and since "[n]o one could quarrel with the proposition that the promotion of domestic industry is a legitimate state purpose",[14] the tax did not violate the Equal Protection Clause.

THE FEDERAL QUESTION IS SUBSTANTIAL

Although presenting issues involving three different clauses of the United States Constitution, this case in reality turns on just one fundamental principle of fed-

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exemptions which favor Hawaii-made *products*, yet the Hawaii Supreme Court felt it could distinguish Maryland v. Louisiana on this basis. *See also* n. 15 *infra*.

[14]Appendix A, *infra*, at A-11, 13. The court's citation of authority for this proposition is misleading. Western & Southern Life Insurance Co. v. Board of Equalization, 451 U.S. 648 (1981), did *not* hold, as stated in Justice Nakamura's opinion, that "the promotion of domestic industry is a legitimate state purpose"; what the decision said was "promotion of domestic industry *by deterring barriers to interstate business* is a legitimate state purpose: (451 U.S. at 671, emphasis added.) In that case, a retaliatory tax equalizing California's tax on foreign insurers with the tax imposed on California insurers by the foreign insurers' home State was upheld on the ground that the rational and legitimate purpose of the tax was to encourage other States to lower their tax on California insurers. No suggestion has ever been made, least of all by the Hawaii Supreme Court, that Hawaii's liquor tax is designed to have a similar effect. The liquor tax is not retaliatory; it is simply discriminatory. It does not deter barriers; it creates them.

eralism, gleaned through experience under the Articles of Confederation, embodied by the Framers in the Constitution itself, and iterated time and again by this Court through the centuries: *No State may erect an economic barrier against out-of-state products or services in order to provide a commercial advantage to local business.*

The Hawaii liquor tax on its face singles out products for exemption by place of origin, and they are all products defined as made in Hawaii.[15] The Legislature could not have made its purpose plainer in passing the exemptions; nor could it (with its history of past exemptions, and with the

[15] At various places in its opinion, the Hawaii Supreme Court seems to imply that because the products exempted are not the usual type of product found in commerce, but are unique to Hawaii, the volume of commerce involved is insubstantial and therefore the question is insubstantial. Apart from the obviously erroneous premise (the latest product to be exempted—rum—can hardly be considered unique to Hawaii), the fallacy in such an implication has been answered by this Court before: First, by Justice Marshall in Brown v. Maryland, 25 U.S. (12 Wheat.) 419, 439 (1827), when he observed:

> It is obvious that the same power which imposes a light duty can impose a very heavy one, one which amounts to a prohibition. Questions of power do not depend on the degree to which it may be exercised. If it may be exercised at all, it must be exercised at the will of those in whose hands it is placed.

[*Id.* at 439.]

(*Brown* itself involved an "impost" of only $50.) And, most recently, on the question of the degree of discrimination in a tax, this Court in Maryland v. Louisiana, 451 U.S. 725, 759-760 (1981) said:

> It may be true that further hearings would be required to provide a precise determination of the extent of the discrimination in this case, but this is an insufficient reason for not now declaring the Tax unconstitutional and eliminating the discrimination. We need not know how unequal the Tax is before concluding that it unconstitutionally discriminates.

passing of the most recent exemption) have demonstrated more clearly its intent to continue adopting such provisions unless and until told that they render the tax unconstitutional.[16]

The question involved is only one of federal law; there is no dispute as to state law or its interpretation. The precise type of tax at issue—a state ad valorem tax on imported liquor—has not been presented to this Court before,[17] but its unconstitutionality under the precedents of this Court is not seriously open to question. More than one hundred years ago, in *Guy v. Mayor of Baltimore*, 100 U.S. 434, 438-439 (1880), Justice Harlan anticipated a question similar to that involved here:[18]

> In *Hinson v. Lott*, 8 Wall. 148, 19 L.Ed. 387, we upheld a Statute of Alabama, imposing taxes upon the sale of spirituous liquors within its limits, upon the ground

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[16] See the legislative history of the five separate exemptions to the liquor tax passed by the Hawaii legislature between 1960 and 1981, set out *supra*, pp. 5-7.

[17] The precise question here involved was presented to the New York Court of Appeals in People v. Maring, 3 Keys 374 (N.Y. 1867), a precedent cited to but spurned by the Hawaii Supreme Court. The case held that a New York statute which imposed a tax upon the sale by brokers of "foreign wines and ardent spirits," and of "all goods, wares, merchandise and effects imported from any place beyond the Cape of Good Hope . . . or which are the production of any foreign country," violated the Import-Export Clause of the United States Constitution.

[18] The decision in Guy v. Mayor of Baltimore, a case decided under the Commerce Clause, of course antedated the Twenty-first Amendment and the cases discussed in n. 19 *infra;* however, the analysis implicit in Justice Harlan's example dealing with interstate discrimination against liquor is identical to that followed in People v. Maring (*supra*, n. 17), which dealt with the Import-Export Clause.

> that it did not discriminate against the products of other States, and only subjected them to the same taxation imposed upon similar articles manufactured in that State. Had the statute been susceptible of a different construction, it would have been held repugnant to the Constitution.

The intervening passage of the Twenty-first Amendment and some of the cases arising under it[19] may have focused attention elsewhere for awhile, but the exclusive power of Congress over foreign trade in liquor was reaffirmed by this Court's opinion in *Department of Revenue v. James B. Beam Distilling Co.*, 377 U.S. 341, 345-346 (1964).[20] Most

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[19]Under the decisions of this Court in Mahoney v. Joseph Triner Corp., 304 U.S. 401 (1938), Indianapolis Brewing Co. v. Liquor Control Commission, 305 U.S. 391 (1939), and Joseph S. Finch Co. v. McKittrick, 305 U.S. 395 (1939), the Hawaii tax might not have been regarded as unconstitutional under the Commerce Clause if it applied only to liquor brought in from other states. (More recent decisions of this court indicate, however, that the unfettered discretion previously afforded to the states in taxing and regulating the sale of liquor has to be balanced against competing Federal interests on a case-by-case basis. See Hostetter v. Idlewild Liquor Corp., 377 U.S. 324, 332 [1964]; California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 445 U.S. 97, 106-110 [1980].) Because the Hawaii Liquor Tax applies broadly to all imports, however, including liquor imported from foreign countries, this Court's decisions under the Import-Export Clause are called directly into play. As is shown in the quotations in n. 20 *infra* and the text following, two of those decisions alone govern the disposition of this case, and to that extent the Commerce Clause and Equal Protection Clause issues are subordinate.

[20]In the *James Beam* case this Court declared unconstitutional, in the following words, a gallonage tax imposed by Kentucky on shipments of foreign whisky into the State:

> To sustain the tax which Kentucky has imposed in this case would require nothing short of squarely holding that the Twenty-first Amendment has completely repealed the Import-

recently, in its opinion in *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 288 at n. 7 (1976), this Court again envisioned the type of tax here involved, and indicated plainly its unconstitutionality:

> Of course, discriminatory taxation in such circumstances is not inconceivable. For example, a State could pass a law which only taxed the retail sale of imported goods, while the retail sale of domestic goods was not taxed. Such a tax, even though operating after an 'initial sale' of the imports would, of course, be invalidated as a discriminatory imposition that was, in practical effect, an impost. Nothing in the opinion in Brown v. Maryland should suggest otherwise. The Court in Brown merely presumed that at these later stages of commercial activity, state impositions would not be discriminatory.

THE CONFLICT WITH CONTROLLING PRECEDENT IS SUBSTANTIAL

The Hawaii court's deviation from the foregoing precedents is so flagrant, and so manifest, that the substantiality of the questions presented by this appeal derives even more from the final authority of this Court in constitutional matters than from the nature of the question itself. (This is not a case involving conflicting state precedents; the few state court decisions that did seek to claim the power asserted by Hawaii in this case have been reversed.[11]

Export Clause so far as intoxicants are concerned. [Footnote omitted.] Nothing in the language of the Amendment nor in its history leads to such an extraordinary conclusion. This Court has never intimated such a view, and now that the claim for the first time is squarely presented, we reject it. [*Ibid.*]

[11] *E.g.*, Boston Stock Exchange v. State Tax Commission, 37 N.Y. 2d 535, 337 N.S.2d 758 (1975), *reversed*, 429 U.S. 318 (1977); I. M. Darnell & Son Co. v. Memphis, 116 Tenn. 424, 95 S.W. 816 (1907), *reversed*, 208 U.S. 113 (1908).

Nor is this a case involving a novel or untried principle of constitutional law—as noted above, the principle at stake is nothing less than a fundamental principle of federalism, upheld in numerous decisions of this Court.) Since the decision on this appeal will be a decision on the merits, and if the foregoing precedents are not deemed sufficiently controlling to warrant a summary reversal, then probable jurisdiction should be noted in order to permit fuller consideration of the effect of this case on those precedents.[22]

THIS WILL BE THE ONLY OPPORTUNITY FOR A FEDERAL COURT TO RULE ON THE FEDERAL ISSUES PRESENTED

The fact that this case is brought on an appeal, rather than on a writ of certiorari, is another facet of the substantiality of the question presented. For this case is one of the few in which the federal questions raised can be passed on only by this Court, as opposed to a lower federal court in the first instance, because the latter are precluded from hearing the case by the Tax Injunction Act, 28 U.S.C. § 1341. The procedure followed by the taxpayers in this case—payment of the taxes under protest, and then a suit for refund—is the only one available to raise the federal constitutional issues involved,[23] and it is imperative for the

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[22] See Colorado Springs Amusements, Ltd. v. Mayor of Philadelphia, 428 U.S. 913 (1976) (Brennan, J. dissenting).

[23] See Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 300-301 (1943):

> But it must be remembered that in such cases, in the event of an adverse decision of the State court, an appeal lies to the United States Supreme Court so that the contestant may ultimately have his constitutional rights determined by the highest Federal court, even though he may not have access in the first

integrity of the federal system that the Hawaii Supreme Court's decision not become the final word on the subject.

CONCLUSION

The decision of the Hawaii Supreme Court appealed from flouts, and even ignores, controlling precedent. It misconstrues the precedent which it does recognize, and arrives at an isolationist conclusion that is wholly incompatible with our federal system. It should be summarily reversed, or at a minimum probable jurisdiction should be noted and the case set for briefing and oral argument.

Respectfully submitted,

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Attorney for Appellants

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instance to the United States district courts . . . H.R. Rep. No. 1503, 75th Cong., 1st Sess. 3 (1937). The considerations which persuaded federal courts of equity not to grant relief against an allegedly unlawful State tax, and which led to the enactment of the Act of August 21, 1937 [the Tax Injunction Act], are persuasive that relief by way of declaratory judgment may likewise be withheld in the sound discretion of the Court. With due regard for these considerations, it is the Court's duty to withhold such relief, when, as in the present case, it appears that the State legislature has provided that on payment of any challenged tax to the appropriate State officer, the taxpayer may maintain suit to receive it back. In such a suit he may assert his federal rights and secure a review of them by this Court. This affords an adequate remedy to the taxpayer, and at the same time leaves undisturbed the State's administration of its taxes.